

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ALEX VARNER

Plaintiff,

vs.

No. CIV 03-468 LCS/KBM

COUNTY OF LINCOLN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER having come before the Court on Defendant Nishitani's Motion to Dismiss, filed November 14, 2003 (Doc. 14) pursuant to Rule 12(b)(6) which allows dismissal for a "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). The Court having reviewed the Motion and the memoranda submitted in connection therewith, and being otherwise fully advised in the premises, FINDS that the Motion is well-taken and should be **GRANTED.**

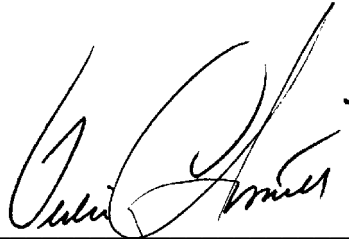
Rule 8(a) requires that a pleading which sets forth a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . ." FED R. CIV. P. 8(a). Having carefully examined the Complaint, I cannot find alleged any conceivable set of facts that would entitle plaintiff to relief from Defendant Nishitani. *See Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002).

In light of the stage of the proceedings, however, I will permit Plaintiff to file an amended Complaint, for the sole purpose of setting forth a claim against Nishitani. However, Plaintiff is on

notice of his Rule 11 obligations. *See* FED. R. CIV. P. 11.

IT IS, THEREFORE, ORDERED that Defendant Nishitani's Motion to Dismiss be and the same is hereby **GRANTED**. Said Defendant is hereby dismissed from this action.

IT IS FURTHER ORDERED that Plaintiff shall have until **THURSDAY, FEBRUARY 5, 2004** to file his amended complaint for the sole purpose of stating a claim against Defendant Nishitani.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE